

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	CSR 8308-E
	)	CSR 8319-E
	)	CSR 8322-E
Mediacom Companies	)	CSR 8323-E
	)	CSR 8324-E
Petitions for Determination of Effective	)	CSR 8325-E
Competition in 20 Communities in Illinois,	)	CSR 8327-E
Missouri, and Ohio	)	CSR 8328-E
	)	CSR 8330-E
	)	CSR 8332-E

MEMORANDUM OPINION AND ORDER

Adopted: January 10, 2011

Released: January 10, 2011

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Several Mediacom companies,¹ hereinafter referred to as “Petitioner,” have filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as the “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(l)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”),² and the Commission’s implementing rules,³ and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DIRECTV, Inc. (“DIRECTV”), and DISH Network (“DISH”). The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹ Specifically, the companies are Mediacom Indiana LLC in CSR 8308-E; Mediacom Illinois in CSRs 8319-E, 8322-E, 8324-E, 8325-E, 8327-E, 8328-E, and 8330-E; Mediacom Southeast LLC and MCC Missouri LLC in CSR 8323-E; and Mediacom Southeast LLC in CSR 8332-E.

² See 47 U.S.C. § 543(l)(1)(B).

³ 47 C.F.R. § 76.905(b)(2).

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(l)(1); 47 C.F.R. § 76.905(b).

⁶ See 47 C.F.R. §§ 76.906 & -907(b).

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁷ This test is referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁸

5. Turning to the first prong of this test, it is undisputed that the Communities are “served by” both DBS providers, DIRECTV and DISH, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petitions with citations to the channel lineups for both DIRECTV and DISH.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and DISH offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceeds 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.¹⁵

⁷ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁸ 47 C.F.R. § 76.905(b)(2)(i).

⁹ *See, e.g.*, Petition in CSR 8308-E at 3-5; Petition in CSR 8319-E at 3-5.

¹⁰ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹¹ *See* 47 C.F.R. § 76.905(g). *See also, e.g.*, Petition in CSR 8322-E at 5-6; Petition in CSR 8323-E at 5-6.

¹² *See, e.g.*, Petition in CSR 8324-E at 4 n.11; *id.* at 6.

¹³ *See, e.g.*, Petition in CSR 8325-E at 6-7; Petition in CSR 8327-E at 6-7.

¹⁴ *See, e.g.*, Petition in CSR 8328-E, Declaration of Edward Pardini, Mediacom Senior Divisional Vice President, at ¶ 2 (dated March 24, 2010).

¹⁵ *See, e.g.*, Petition in CSR 8330-E at 7. A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by the Mediacom Companies specified in footnote 1 above **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to or on behalf of any of the Communities set forth on Attachment A **IS REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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¹⁶ See, e.g., Petition in CSR 8332-E at 7.

¹⁷ 47 C.F.R. § 0.283.

ATTACHMENT A

CSRs 8308-E, 8319-E, 8322-E, 8223-E, 8324-E, 8325-E, 8327-E, 8328-E, 8330-E, 8332-E

COMMUNITIES SERVED BY MEDIACOM COMPANIES

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
CSR 8308-E (Mediacom Indiana)				
Antwerp	OH0916	15.83%	739	117
CSR 8319-E (Mediacom Illinois)				
Casey	IL1173	19.04%	1266	241
CSR 8322-E (Mediacom Illinois)				
Jacksonville	IL0036	27.06%	7336	1985
South Jacksonville	IL0038	32.58%	1584	516
CSR 8223-E (Mediacom Southeast and MCC Missouri)				
Excelsior Springs	MO0033 MO0034	26.87%	4079	1096
Lawson City	MO0548 MO0618	36.55%	818	299
Richmond City	MO0178	30.39%	2488	756
CSR 8324-E (Mediacom Illinois)				
Mahomet	IL0477	18.22%	3557	648
Fisher	IL0582	23.65%	630	149
Rantoul	IL0200	19.36%	5330	1032
Thomasboro	IL0347	16.16%	495	80
CSR 8325-E (Mediacom Illinois)				
Delavan	IL0788	22.84%	705	161
Elkhart	IL0992	23.58%	229	54
Emden	IL0790	27.31%	216	59
CSR 8327-E (Mediacom Illinois)				
Lena	IL0704	25.77%	1164	300
Dakota	IL1244	19.94%	316	63
CSR 8328-E (Mediacom Illinois)				
Mount Carroll Township	IL0998	16.45%	997	164
Warren	IL0697	15.27%	622	95
CSR 8330-E (Mediacom Illinois)				
Watseka	IL0035	29.43%	2314	681
CSR 8332-E (Mediacom Southeast)				
Hayti	MO0011	22.76%	1318	300

*CPR = Percent of competitive DBS penetration rate.